

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **September 19, 2006**

RE: **Analysis Report**

Balances As Of:	<u>9/13/06</u>	<u>9/14/05</u>
<u>GSD 4% RESERVE FUND</u>	* \$27,923,934	\$32,286,466
<u>CONTINGENCY ACCOUNT</u>		
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE SCHOOL FUND</u>	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2007 in the amount of \$22,288,429

– RESOLUTIONS –

RESOLUTION NOS. RS2004-539 through RS2006-1487 – These resolutions provide proposed amendments to the Metropolitan Charter. The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. These resolutions provide that the date for holding the referendum election on these Charter amendments is to be the November 7, 2006, general election. In order to comply with state election law, amendments to the Charter for the November 2006 ballot must to be adopted by the Council at the September 19 council meeting. A separate analysis of each of the proposed Charter amendments is attached at the end of this analysis.

The council office would caution the council of proposing amendments to the Charter. The Charter forms the foundation of Metropolitan Government and, like the Constitution of the United States and Tennessee, should only be amended when absolutely necessary. Generally, past councils have given recommendations of the Charter revision commission a great deal of weight.

RESOLUTION NOS. RS2006-1488 & RS2006-1489 (JAMESON) – These two resolutions approve grants from the federal highway administration, through the state department of transportation, related to the revitalization of the Rolling Mill Hill site. These grants will be administered through the Metropolitan development and housing agency (MDHA).

Resolution No. RS2006-1488 approves a grant in the amount of \$1,500,000 for the Rolling Mill Hill Cumberland River greenway extension project. There is no required local match for this grant.

Resolution No. RS2006-1489 approves a grant in the amount of \$5,400,000 for the Rolling Mill Hill road connectors and streetscape improvements project. There is a required local match of \$1,080,000 to be provided by MDHA.

Since copies of the grant agreements have not yet been provided to MDHA, the council office has not had the opportunity to review Metro's liabilities and duties in the agreements. MDHA has said they will provide the council office with a statement as to the proposed use of funds prior to the council meeting.

RESOLUTION NOS. RS2006-1490 & RS2006-1491 – These two resolutions appropriate federal community development block grant (CDBG) funds for projects in two neighborhood strategy areas. CDBG funds may only be used for affordable housing activities and neighborhood community improvement projects.

Resolution No. RS2006-1490 (Greer) appropriates \$274,000 in CDBG funds for streetlight improvements, gateway signs, vacant lot acquisition and site preparation, and new playground equipment for the Fall-Hamilton school in the Martin Street neighborhood strategy area.

A housekeeping amendment should be offered for this resolution changing "Fall-Hamilton Public" to "Fall-Hamilton Public School".

Resolution No. RS2006-1491 (Murray) appropriates \$60,000 in CDBG funds for streetscape improvements in the Maxwell neighborhood strategy area.

RESOLUTION NO. RS2006-1492 (COLE, JAMESON & OTHERS) – This resolution accepts the East Nashville community plan 2006 update, as well as several neighborhood design plans, adopted by the planning commission on February 9, 2006. The East Nashville community plan, formerly the subarea 5 plan, is one of fourteen subarea plans making up the general plan, which is used by the planning commission in its decision making process regarding zoning. This plan update is the result of eighteen community meetings held between March 2005 and January 2006 where neighbors worked with planning commission staff to develop detailed neighborhood design plans for the Cleveland Park, Greenwood, McFerrin Park, East Hill, Renraw, and South Inglewood (west) neighborhoods. This resolution is simply a memorializing of the plan, as the subarea plans have no binding effect on zoning decisions made by the council.

RESOLUTION NO. RS2006-1493 (JAMESON & NEIGHBORS) – This resolution approves the waiver of benefit overpayments made to twenty-four pensioners and one beneficiary in the Metro employee benefit system, which were caused by employee benefit board staff errors. The Metropolitan Code of Laws permits the benefit board to waive such overpayments provided that the beneficiary was without fault or knowledge of the error and would be deprived of income for living expenses if forced to repay the amount of overpayment. The total amount of the overpayments made to the pensioners is \$8,392.82, with individual overpayments ranging from \$74.22 to \$1,500.18.

The employee benefit board has approved these waivers and they must be approved by the council before they become final. This resolution is the result of an on-going program of the employee benefit board that reviews all pension payments to assure our pensioners are being paid the correct amount. If the pensioners are underpaid, the back payments are automatically paid without council approval.

RESOLUTION NO. RS2006-1494 (NEIGHBORS) – This resolution approves an annual grant in the amount of \$9,000 from the state commission on children and youth to the juvenile court to improve juvenile court services. These grant funds will be used to reimburse the juvenile court for alternative placement and transportation services, and to develop other alternatives to jail for children, including emergency foster homes, crisis intervention, home detention, and attendant care.

RESOLUTION NO. RS2006-1495 (NEIGHBORS) – This resolution approves a grant in the amount of \$1,000,000 from the State of Tennessee to the Davidson County drug court. The drug court is a diversionary program that provides supervision and treatment of non-violent drug offenders. These funds are anticipated revenue in the state trial courts' budget, and will be used for the residential drug court program. The term of the grant is for two years, with a possible extension of two additional years. The grant agreement provides that the drug court will receive \$500,000 in fiscal year 2007 and \$500,000 in 2008.

RESOLUTION NO. RS2006-1496 (NEIGHBORS) – This resolution approves an annual grant in the amount of \$10,000 from the state administrative office of the courts to the state trial courts for the coordination of parenting plans, divorce education, and mediation services. The term of this grant is from July 1, 2006 through June 30, 2007. These funds will be used to provide on-call mediation services for divorce cases involving minors, providing interpreters for non-English speaking divorcing parents, and the development of guardian ad litem curriculum.

RESOLUTION NO. RS2006-1497 (NEIGHBORS & TOLER) – This resolution approves an annual grant in the amount of \$85,000 from the state department of environment and conservation to the Metropolitan Government to provide assistance in maintaining and operating a permanent household hazardous collection site located at 941 Dr. Richard Adams Drive. The term of this grant is from October 1, 2006 through June 30, 2007, with a possible one-year extension.

RESOLUTION NO. RS2006-1498 (NEIGHBORS) – This resolution approves a grant in the amount of \$500,000 from the state department of economic and community development, through the fast track infrastructure development program (FIDP), for improvements for ARTE Center, Inc. The FIDP, formerly known as the Tennessee industrial infrastructure program, is a state program in which the Metropolitan Government, the Greater Nashville Regional Council, and private businesses participate to obtain grant funds for infrastructure improvements. The funds are available to businesses that create new jobs through the expansion of new facilities. Similar grants have been made under this program during the past two years.

ARTE Center, Inc. is a nonprofit organization that focuses on growing technology-based companies that will provide high-paying jobs in the future. These grant funds will be used to convert approximately 25,000 square feet of existing office/warehouse space located at 1111 Foster Avenue into a technology business incubator. Technology incubators are facilities that work to grow businesses in the technology field. ARTE Center has agreed to employ at least 300 new employees within three years. The term of the grant is from July 28, 2006 through June 30, 2011. There is a required match of \$333,500 to be provided by ARTE Center, Inc.

RESOLUTION NO. RS2006-1499 (DOZIER & NEIGHBORS) – This resolution approves an amendment to a grant in the amount of \$380,765 from the U.S. department of homeland security to the Metropolitan fire department for the Metro fire prevention program. These grant funds are used in part to train 25 fire captains as certified fire inspectors, which will greatly increase the department's ability to inspect properties in Davidson County. This resolution simply approves an extension of the grant term through September 13, 2006 to allow the remaining funds to be expended.

RESOLUTION NO. RS2006-1500 (DOZIER, NEIGHBORS & TUCKER) – This resolution approves a grant in the amount of \$106,519.94 from the state emergency management agency to the mayor's office of emergency management for public assistance provided in the hurricane Katrina evacuation. These federal pass-through funds are to reimburse Metro for services provided as part of the Presidential disaster declaration for the hurricane. Metro provided emergency shelter at Highland Heights Middle School, as well as labor, materials, phone service, and supplies to assist evacuees.

RESOLUTION NOS. RS2006-1501 & RS2006-1502 (NEIGHBORS) – These two resolutions accept grants from the state department of labor and workforce development to the Nashville career advancement center to provide training to employees of O'Neal Steel, Inc., through the state incumbent worker training program. These federal funds, under the Workforce Investment Act of 1998, will be used to upgrade skills for 44 employees at O'Neal Steel. The grant will be administered through the Nashville career advancement center. The term of the grant is from August 1, 2006 through July 31, 2007.

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RESOLUTION NOS. RS2006-1501 & RS2006-1502

Resolution No. RS2006-1501 approves a grant in the amount of \$3,600.

Resolution No. RS2006-1502 approves a grant in the amount of \$36,000.

RESOLUTION NO. RS2006-1503 (WALLS & NEIGHBORS) – This resolution approves an annual grant in the amount of \$130,200 from the state department of health to the Metropolitan health department for alcohol and drug abuse diagnosis, prevention, rehabilitation, and treatment services. The term of the grant is from July 1, 2006 through June 30, 2007. These funds will be used for assessments, outpatient services, and partial hospitalization services.

RESOLUTION NO. RS2006-1504 (WALLS & NEIGHBORS) – This resolution accepts a grant in the amount of \$34,200 from the state department of health to the Metropolitan board of health to provide renal intervention services. The term of the grant is from July 1, 2006 through June 30, 2007. These grant funds will be used to pay the salary of a nurse coordinator to provide case management services to at least 75 persons who are at risk of developing end stage renal disease. At risk individuals are defined as persons who are diabetic and/or hypertensive and who demonstrate early signs of kidney damage.

RESOLUTION NO. RS2006-1505 (WALLS & NEIGHBORS) – This resolution approves a grant in the amount of \$198,100 from the state department of health to the Metropolitan board of health to provide primary care services to uninsured adults. These grant funds are to implement the governor's healthcare safety net task force recommendations as a result of the reductions in the TennCare rolls. These funds will be used to pay for health department personnel costs, contract staffing costs, and equipment to provide primary care services, including access to pharmacy services, laboratory services, and specialty referral for uninsured adults. The term of this grant is from August 10, 2006 through June 30, 2007.

RESOLUTION NO. RS2006-1506 (WALLS & NEIGHBORS) – This resolution approves a grant in the amount of \$1,398,900 from the state department of health to the Metropolitan health department for tuberculosis (TB) outreach and control services. These funds will be used to provide and oversee direct patient care to all TB cases, to operate a TB clinic, to monitor existing and suspected TB cases, to conduct targeted TB testing activities, and to provide TB education and training services. The term of the grant is from July 1, 2006 through June 30, 2007. Almost \$900,000 of these funds will be used to pay the salaries of the twenty-five health department employees providing these services.

RESOLUTION NO. RS2006-1507 (WALLS & NEIGHBORS) – This resolution approves a grant in the amount of \$55,000 from the state department of health to the Metropolitan health department for breast and cervical cancer screenings. The term of the grant is from July 1, 2006, through June 30, 2007. These federal pass-through funds will be used to pay the salary of a regional coordinator to continue implementation of a screening service for breast and cervical cancer by reaching out to targeted populations, monitoring women with abnormal test results, and providing community education about the importance of early screening.

RESOLUTION NO. RS2006-1508 (WALLS & NEIGHBORS) – This resolution approves a grant in the amount of \$600,100 from the state department of health to the Metropolitan board of health to provide community intervention services. The term of the grant is from July 1, 2006 through June 30, 2007. These federal pass-through funds are used to provide community prevention intervention services for at-risk children under thirteen years of age to help reduce substance abuse, pregnancy, violence, and drop-out rates. The majority of the grant funds will be awarded to the following subgrantees to provide the services: Center for Youth Issues, Centerstone Community Mental Health Center, New Vision, Inc., the Oasis Center, and the board of public education.

RESOLUTION NO. RS2006-1509 (NEIGHBORS) – This resolution authorizes the department of law to accept \$6,022.67 in settlement of the Metropolitan Government's property damage claim against Legnus Robinson. On June 30, 2006, a Metro police car was parked in the left lane on I-40 east at Massman Drive with the emergency equipment activated working an injury accident. Legnus Robinson failed to react to the emergency lights and struck the rear of the unoccupied police car causing substantial damage to the rear of the vehicle. This resolution accepts \$6,022.67 in settlement, which is a full recovery for the damage to the Metro police car.

RESOLUTION NOS. RS2006-1510 through RS2006-1513 – These four resolutions authorize aerial encroachments above the public right-of-way. Ordinance No. O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and are required to provide a \$300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party.

Resolution No. RS2006-1510 (Jameson) authorizes Joslin & Sons Signs to install an illuminated sign over the sidewalk at 311 Third Avenue South for Sole Mio Restaurant. This will be a 2' x 4' double-sided illuminated sign oriented to Third Avenue.

This resolution has been referred to the planning commission. The planning commission is awaiting approval from the MDHA design committee, as this property is in a redevelopment district. Since the planning commission has not yet considered this resolution, it must be deferred.

Resolution No. RS2006-1511 (Jameson) authorizes August Enterprises, Inc., to install a wall sign extending over the right-of-way for the Martin Corner development located at 1017 Fatherland Street. The sign will be mounted on the corner of the brick building. This resolution has been approved by the planning commission.

Resolution No. RS2006-1512 (Wallace) authorizes R. C. Matthews Contractor, LLC, to install three flags over the sidewalk for the Union Station Hotel located at 1001 Broadway. The flags will be mounted on ten-foot poles extending at an angle over the sidewalk. This resolution has been approved by the planning commission.

Resolution No. RS2006-1513 (Hausser & Wallace) authorizes Vanderbilt University to install and maintain a ten-foot wide pedestrian bridge over the right-of-way of 21st Avenue South just north of Pierce Avenue. A similar pedestrian bridge is located at the intersection of 21st Avenue South and Edgehill. This resolution has been approved by the planning commission.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2004-224 (SUMMERS, CRAFTON & WILHOITE) – This zoning text change modifies the planned unit development (PUD) overlay provisions to require that all modifications to a PUD master development plan more than four years old be approved by the council, and to require that all PUDs for which no building permit has been issued within eight years from the final approval of the PUD by the council be resubmitted to the Council for approval by ordinance before any building or grading permit can be issued. The code currently only requires major PUD modifications to come before the council. Major modifications include land being added or removed from the PUD, modification of design standards specified in the ordinance applying the PUD, a change in use, a change in access, or a change in the underlying zoning district. Minor modifications can be approved either by the executive director of the planning department or the planning commission, depending on the nature of the modification.

There are approximately 100 unbuilt PUDs in Davidson County that are more than eight years old.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1065 (WALLACE) – This ordinance amends the Metropolitan Code of Laws to prohibit chain link fences along arterial and collector streets. The code currently prohibits the use of barbed or razor wire on fences along sidewalks within the urban services district. This ordinance would essentially prohibit any chain link fence along the right-of-way of a collector or arterial street, which are the classifications used for the major streets and roads in Davidson County. This ordinance would apply to both the urban services district and the general services district, and would prohibit chain link fences in both commercial and residential areas.

The council office would point out that this ordinance could result in a substantial cost to the Metropolitan Government, especially schools, if Metro facilities were required to have stone, brick or wood fences.

ORDINANCE NO. BL2006-1137 (SHULMAN & WALLS) – This ordinance amends the Metropolitan Code of Laws to place restrictions on outdoor pet tethering. The ordinance defines tethering as attaching an animal to a stationary object by a chain, cable or similar device. An animal would not be considered tethered if the owner is physically within reach of the animal. The ordinance would prohibit persons from tethering an animal unless the animal has adequate food, water and shelter. Further, persons would be prohibited from attaching an animal to a stationary object if the animal is not able to move from the stationary object. An animal attached to a running cable line or trolley system would not be considered “tethered” if: (1) only one animal is attached to the line; (2) the cable does not weigh more than is reasonable for the body weight of the animal; (3) the cable is at least ten feet long; and (4) the animal has free access to food, water and shelter. Dog owners would be prohibited from using choke collars to attach an animal to a running cable line or trolley system.

The ordinance purports to make a violation of the ordinance a misdemeanor. The council does not have the authority to designate something a criminal offense. Rather, violations of this ordinance would only be a civil offense punishable by a fine and/or impoundment of the animal.

The council office would point out that both state law and the Metro code already prohibit cruelty to animals. Cruelty to animals includes a failure to provide adequate food, water, and shelter, and attaching an animal to a chain that is less than fifteen feet in length.

ORDINANCE NO. RS2006-1144 (NEIGHBORS) – This ordinance authorizes TM Investments, LLC to install and maintain a sign encroachment at 4900 Linbar Drive. This ordinance would allow an existing pole sign in the right-of-way for the Smoke 'N' Save business located at the property. TM Investments, LLC, will be required to maintain a \$300,000 public liability insurance policy to protect the Metropolitan Government from any damage or injury caused by the sign.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2006-1173 (CRAFTON) – This zoning text change amends the Metro Code to provide for the waiver of application fees for rezonings initiated by members of council that would rezone property from a mixed-use district to a residential or residential single-family district. In February 2005, the council enacted Ordinance No. BL2004-409 to provide that the zoning application fee may be waived for rezoning requests initiated by members of council in the following circumstances:

1. To rezone property from a greater intensity residential use to a lesser intensity residential use (i.e. an "R" district to an "RS" district); or
2. To rezone property from an office, commercial, or industrial district (excluding mixed-use districts) to a residential or residential single-family district; or
3. To apply the urban design overlay district, historic preservation district, neighborhood conservation overlay district, or urban zoning overlay district to the property.

This ordinance would extend the fee waiver provisions to include property being rezoned from a mixed-use district to a residential district.

The planning commission voted to make no recommendation regarding this zoning text change on the grounds that this is a matter of council policy.

ORDINANCE NO. BL2006-1176 (NEIGHBORS, WALLS & OTHERS) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2006-2007. State law allows county legislative bodies to appropriate funds for such programs and establish guidelines for participation in the program and the disbursement of such funds. The council appropriated \$1,008,000 in the current fiscal year's operating budget for a property tax relief program for the elderly, which is approximately \$300,000 more than was appropriated for the last fiscal year.

This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$20,000 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2007.

ORDINANCE NO. BL2006-1179 (TYGARD) – This ordinance amends the Metropolitan Code of Laws to require that employees of elected office holders created by the charter (i.e. Mayor, Vice Mayor and Council) making more than \$100,000 per year be residents of Davidson County. For many years, the Metro Code required that all employees be residents of the area of Metropolitan Government. However, the council repealed that requirement in 1994 and replaced the residency requirement with one that required employees be residents of the State of Tennessee only.

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ORDINANCE NO. BL2006-1179, continued

The council office is of the opinion that this ordinance is unconstitutional. While the United States Supreme Court has ruled that it is valid to require that employees of local governments be residents of the jurisdiction of the government, such a residency requirement must be uniformly applied to satisfy constitutional muster. The residency requirement in this ordinance would only apply to those persons working for certain elected officials that make in excess of \$100,000, and therefore would not be uniformly applied to similarly situated employees.

ORDINANCE NO. BL2006-1180 (NEIGHBORS & JAMESON) – This ordinance amends the Metropolitan Code of Laws to authorize the employee benefit board to adopt additional types of self-insured medical plan design structures. The code currently provides that the self-insured medical benefit plans are to be administered on a preferred provider (PPO)/non-preferred provider (non-PPO) basis. Metro has a contract with BlueCross/BlueShield of Tennessee to administer our self-insured plan. Under the plan, preferred provider benefits are paid at eighty percent of the reasonable and customary charges for the medical services, with the employee being responsible for the remaining twenty percent. Non-PPO benefits are paid on a sixty percent – forty percent split between Metro and the employee. The annual out-of-pocket maximum for individual PPO coverage is \$1,000, or \$2,000 for family coverage. The out-of-pocket maximum for non-PPO coverage is \$5,000 for an individual or \$10,000 for a family.

This ordinance would allow the benefit board to adopt other types of self-insured medical plan design structures in addition to the PPO/non-PPO plan. An actuarial determination of the cost of each additional self-insured medical plan and the effect it would have on the soundness of the system's design of benefits would be required before the benefit board could adopt an additional plan.

This ordinance would allow the benefit board to approve additional self-insured medical benefit plans for Metro employees without any further action by the council.

The council office recommends that this ordinance be amended to require ratification of any new self-insured medical plans by resolution of the council.

ORDINANCE NO. BL2006-1182 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Pulte Homes, Tennessee LP to provide public sewer service to section 4A of the Winterset Woods subdivision in Williamson County. The developer has agreed to contribute \$64,000 toward the cost of the project in aid of construction for a total of 32 single-family home connections. These funds are to be deposited into the water and sewer extension and replacement fund. This is a typical participation agreement entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

An identical ordinance failed to receive approval of the council on August 15, 2006. The council office would point out that this ordinance generates money for the water department from out-of-county developers to help support the extension of the sewer system in all areas that the water department provides service. The trunk line servicing this development in Williamson County has already been extended in anticipation of future developments connecting to the system.

ORDINANCE NOS. BL2006-1183 and BL2006-1184 – These two ordinances abandon sanitary sewer lines and easements that are no longer needed by the department of water and sewerage services. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-1183 (Toler & Neighbors) abandons an 8" sanitary sewer line and easement for the Nashville Readiness Center located at 3041 Sidco Drive. A sanitary sewer line of equal size will be replacing the abandoned line.

Ordinance No. BL2006-1184 (Toler) abandons a 12" sanitary sewer line and easement for property located at 423 Prestwick Court.

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2006-1124 (TOLER) – This ordinance amends the Metropolitan Code of Laws to prohibit the department of water and sewerage services from charging any fee for connection to the water or sewer system unless such fee has been approved by the council. The council already sets water/sewer rates and capacity charges by ordinance. In June 2006, the council approved an ordinance adding a new capacity charge of \$1,000 on all new single-family equivalent connections to the public water supply system, and increased the capacity charge on all new single-family equivalent connections to the public sewer system from \$500 to \$2,000 per connection.

The purpose of this ordinance is to address a “basin charge” that some developers pay, in addition to the capacity charges, for connection to the sewer system. This basin fee is in the amount of \$2,000 per single family connection, and is paid upon agreement of the developers. Although there is nothing in the code allowing a basin fee to be charged, each participation agreement is subject to approval of the council by ordinance. This ordinance would prohibit the water department from imposing such a basin charge unless the council approves a general ordinance authorizing the imposition of such fee. Once the council enacted an ordinance authorizing the department to impose the basin charge, the council would presumably no longer need to approve these participation agreements on a piece meal basis if the basin fee is the only subject matter of the agreements.

ORDINANCE NO. BL2006-1126 (WILHOITE & FOSTER) – This ordinance would require that all brochures, pamphlets and reports published by the Metropolitan Government contain a statement regarding the number of copies published and the cost per copy. This would apply to any publication prepared by a Metro department, agency, board or commission for distribution outside of the particular department. The total cost per copy is to include the costs for materials, copying and the labor involved in the preparation of the publication.

The council office would remind members of council that several of the large publications prepared by various Metro departments are required by council ordinance.

ORDINANCE NO. BL2006-1129 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into participation agreements with Cates-Kottas Development to provide public sewer service to section 19 of the Brookfield subdivision in Williamson County. The developer has agreed to contribute \$66,000 toward the cost of the project in aid of construction for a total of 33 single-family home connections. These funds are to be deposited into the water and sewer extension and replacement fund. This is a typical participation agreements entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

ORDINANCE NO. BL2006-1136 (LORING, WHITE & OTHERS) – This ordinance, as amended, amends the Metro procurement code to prohibit persons contracting with the Metropolitan Government from knowingly using employees that are not legal residents of the United States. The ordinance would require the purchasing agent to include a statement in all requests for proposals or invitations to bid prohibiting the successful bidder or any of their subcontractors from employing persons that are not legal residents of this country. Any contractor found in violation of this ordinance would be subject to a three-year debarment from being awarded Metro business.

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ORDINANCE NO. BL2006-1136, continued

The council office would point out that the authority for the enforcement of immigration laws is vested with the federal government. Thus, Metro would not have the authority to check worksites for the residency status of immigrant workers. However, contractors found by the federal government to be employing illegal immigrants would be subject to the provisions of this ordinance.

ORDINANCE NO. BL2006-1138 (WALLS, GILMORE & HUNT) – This ordinance amends the excessive noise provisions of the Metropolitan Code of Laws to provide limits on the operation of sound amplification equipment. The Metro noise ordinance currently prohibits using any “musical instrument, radio set, television set, phonograph, Victrola” or other device used to produce or amplify sound so as to “disturb the peace and comfort of the neighboring inhabitants”. As the wording of the code language indicates, this ordinance has been a part of the code for many years and the language is somewhat antiquated. Further, the ordinance is rather vaguely worded in that it does not specify the level of noise that would be disturbing to neighbors.

In an effort to bring this code provision up to date, the sponsors have modeled this ordinance after the noise ordinance in Charlotte, North Carolina. This ordinance would prohibit the operation of any sound amplification equipment that registers more than 55 db(A) between 9:00 a.m. and 9:00 p.m., or 50 db(A) between 9:00 p.m. and 9:00 a.m., as measured from the boundary line of the nearest residential property. For multifamily residential structures, the measurement would be taken from any point within the interior of another residential unit within the same complex. The ordinance also includes a more up-to-date definition of “sound amplification equipment”.

The provisions of this ordinance would not apply to special events permitted by the Metropolitan Government, nor would it apply to outdoor entertainment facilities or property lying within the CC zoning district. The other provisions of the Metro noise ordinance pertaining to car stereos and construction noise remain unchanged by this ordinance. Since the police department would be charged with enforcing this ordinance, the council office recommends that the council obtain assurances from the police department that they have the necessary decibel meters to measure sound levels.

There is a proposed amendment for this ordinance that would exempt the downtown area from the provisions of the ordinance. Unanimous consent of the council will be required to suspend the rules for purposes of considering the amendment since the ordinance is on third reading.

ORDINANCE NO. BL2006-1140 (FOSTER & FORKUM) – This ordinance authorizes the director of public property administration to accept an easement for use as part of the Seven Mile Creek greenway. The easement is being granted by the Tennessee department of agriculture located on property adjacent to Ellington Agricultural Center. The state has the right to terminate the easement after ten years. This ordinance has been approved by the planning commission and the board of parks and recreation.

ORDINANCE NO. BL2006-1141 (WALLACE) – This ordinance abandons an 8” and 30” sewer line and easement, and a 6” water line and easement for property at the John Henry Hale Homes. The water/sewer lines and easements to be abandoned will be replaced with new lines and easements. This sewer line and easement will be replaced with a 10” and 12” sanitary sewer line on another part of the property. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1142 (TOLER) – This ordinance abandons a 15' public utility drainage easement encumbering property located at 305 Hill Avenue. This easement is no longer being used for public purposes. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1143 (WALLS, WHITE & OTHERS) – This ordinance accepts easements to allow for the completion of various stormwater projects. These easements are being donated by the property owners at no cost to Metro. Easements are to be accepted for the following properties:

- 3011 West End Avenue
- Bedford Avenue, unnumbered
- 1111 18th Avenue South
- 2246 Una Antioch Pike
- 5th Avenue North, unnumbered
- 600 12th Avenue South
- 521 Magazine Street
- 300 11th Avenue South
- 5100 Tennessee Avenue
- 1220 8th Avenue South
- 3021 and 4841 Lebanon Pike
- Hillsboro Pike, unnumbered
- 4025 and 4039 Hillsboro Pike
- 3826 Bedford Avenue
- 664 Vernon Avenue

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1171 (RYMAN, MURRAY & OTHERS) – This zoning text change amends the definition of "family" under the zoning code to limit the number of unrelated persons that are being treated for drug and/or alcohol dependency or abuse in a group home. The Fair Housing Amendments Act of 1988 extended the protection of the 1968 Fair Housing Act (the "Act") to the disabled. The U.S. Supreme Court has interpreted the Act to include persons that are mentally ill, as well as those suffering from drug or alcohol addiction, as "disabled". The provisions covering the disability protection in the Act are quite extensive. Discrimination under the Act includes a refusal by a local government from making reasonable accommodations in rules that would afford disabled persons an equal opportunity to use a dwelling. The courts have struck down the majority of local laws that have been challenged under the Act. For example, the courts have held that cities cannot require special use permits for group homes. In addition, the Sixth Circuit Court of Appeals, which includes Tennessee, struck down a Michigan state law that prevented group homes from being located within 1,500 feet of one another. However, the Act and subsequent court cases interpreting the Act allow local governments to enact "reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling," provided that the maximum occupancy restrictions are designed to protect health and safety.

Tennessee law allows up to eight "mentally retarded, mentally handicapped or physically handicapped", plus three additional house parents, to live in a single structure and still be classified as a single-family residence for purposes of the zoning laws. However, the state law does not define "handicapped". Metro has a zoning provision essentially modeling the state law. This ordinance would expressly include persons being treated for drug and/or alcohol dependency or abuse within the definition of handicapped, which would limit the number of unrelated persons living in a single group home to eight. This ordinance has been approved by the planning commission.

Analysis of Proposed Charter Amendments **For Consideration on September 19, 2006**

Resolution No. RS2004-539 (WALLACE) provides a proposed amendment to the Metropolitan Charter to clarify that the office of mayor is limited to two consecutive terms. When the Charter was adopted in 1963, the office of mayor was limited to three consecutive four-year terms. The office of mayor was the only office that was term-limited by the Charter. In 1994, the Charter was amended by petition and referendum election to provide that all elected offices created by the Charter, except general sessions judges, are limited to two consecutive four-year terms. However, the 1994 Charter amendment initiated by the citizens did not specifically repeal the Charter provision related to the term limit for the office of mayor. Therefore, a question remains as to whether the later term limit provision trumps the prior term limit provision regarding the office of mayor, or whether the office of mayor continues to have a term limit of three consecutive terms. The department of law has opined that the mayor is not limited to two terms. However, the current mayor has announced that he will not seek a third term, and has recommended amending the Charter to limit the mayor to two consecutive terms.

This Charter amendment would provide that the office of mayor is limited to two terms, in accordance with the general term limit provision adopted in 1994.

The charter revision commission did not recommend approval of this amendment.

Resolution No. RS2004-574 (WALLACE) provides a proposed amendment to the Metropolitan Charter to require that before a person may be appointed as an interim or acting director of a department, board, or commission, such person must have been an employee of that particular department, board, or commission for at least two years. The Charter currently provides that the civil service commission rules are to provide for the method of certifying vacancies and eligibility for persons to fill such vacancies. The Charter further provides that the civil service commission rules are to be given the full force and effect of law.

This proposed amendment was not recommended by the charter revision commission.

Resolution No. RS2005-679 (WALLACE) provides a proposed amendment to the Charter that would require vacancies in the offices of district councilmember, councilmember-at-large, and vice mayor to be temporarily filled by the council until the next general election. The Charter currently provides that a vacancy in the office of mayor is to be filled by a special election if more than nine months remain prior to the next general election. However, the same Charter section was amended in 1996 to provide that vacancies in the offices of councilmembers and the vice mayor remain vacant until the next general election.

Pursuant to this Charter amendment, the council would elect a person to temporarily fill a vacancy in the office of councilmember or vice mayor until the next general election, at which time the voters would elect a person to fill the vacancy for the remainder of the term.

This proposed amendment was not recommended by the charter revision commission.

Resolution No. RS2005-820 (WALLACE) provides an amendment to the Charter that would give the vice mayor some additional duties. Under the Charter, the primary duty of the vice mayor is to serve as presiding officer of the council. In addition, in the event the office of mayor becomes vacant, the vice mayor would serve as acting mayor until the vacancy is filled. This Charter amendment would provide that in the event the mayor leaves town for more than forty-eight hours, the vice mayor would serve as acting mayor until the mayor returns. The amendment would also provide that whenever the mayor is unable to attend an event or function at which an official representative from the Metropolitan Government is warranted, the mayor shall designate the vice mayor to attend in place of the mayor.

This proposed amendment was not recommended by the charter revision commission.

Resolution No. RS2005-875 (DOZIER) – This resolution provides a proposed amendment to the Metropolitan Charter that would require the mayor to submit his proposed budget to the council not later than March 25th, rather than May 25th, as has been required by the Charter since 1963. Under this proposed amendment, the council would still have until June 30th to adopt a substitute budget, which would give the council three months to deliberate on the budget.

The council office would point out that it would be very difficult for the director of finance to accurately predict projected revenues for the next fiscal year by March 25th. A substantial portion of the Metropolitan Government's revenue is comprised of state funds, and the state legislature does not approve the state's budget until May at the earliest.

This proposed amendment was not recommended by to the charter revision commission.

Resolution No. RS2005-1049 (WALLACE) provides an amendment to the Charter to prohibit members of council from holding any other elected office. The Charter currently prohibits members of council from holding another elective or appointive office in the Metropolitan Government, but does not prohibit members from holding state or federal elected offices. If this amendment was adopted and ratified, councilmembers would be prohibited from holding any other elective office in the federal, state, or local government. A similar amendment failed to receive the required 27 votes by the council in June 2003.

This proposed amendment was not recommended by the charter revision commission.

Resolution No. RS2006-1179 (SUMMERS) – This resolution provides a proposed amendment to the Metropolitan Charter to require that all members of Metropolitan boards and commissions be residents of Davidson County for at least one year. The Charter currently provides that all members of boards and commissions must have either been residents of Davidson County or had their principal place of business in Davidson County for at least one year.

This proposed amendment has been referred to the charter revision commission.

Resolution No. RS2006-1206 (FOSTER) – This resolution provides a proposed amendment to the Metropolitan Charter to make the offices of district councilman and councilman-at-large separate elected offices for the purposes of the Charter term limit provision. The charter provision creating the Metropolitan county council includes both at-large members and district members in the same section. Section 3.01 of the Charter provides that the legislative authority of the Metropolitan Government “shall be vested in the metropolitan county council ... which shall have a total membership of forty (40), including five (5) councilman-at-large and thirty-five (35) district councilmen.” The term limit provision that was enacted by the voters in 1994 limits the service of members of elected offices “created or authorized by the charter” to two consecutive four-year terms. The department of law has opined that the office of at-large councilmember and district councilmember are separate offices for purposes of the term limit provision. Although the council office disagrees with the legal department’s position on this issue, this charter amendment would clarify any legal question by expressly making the two offices separate.

The charter revision commission recommended approval of this amendment.

Resolution Nos. RS2006-1303 & RS2006-1304 (FOSTER) – These two resolutions provide proposed amendments to the Metropolitan Charter regarding the establishment of an independent audit department and term limits for the office of mayor. These two Charter amendments, along with a proposed amendment reducing the size of the council to twenty members, were proposed by the mayor and submitted to the charter revision commission. The charter revision commission unanimously recommended these two amendments to the council, but did not recommend reducing the size of the council.

Resolution No. RS2006-1303 proposes to amend the Charter to create an independent division of audit for the Metropolitan Government. The metropolitan auditor would be selected from a list of three persons recommended by the audit committee, and would be subject to confirmation of the council. The metropolitan auditor would serve a term of eight years and could be removed for cause by the audit committee. The auditor is to be knowledgeable in government finance and must have an understanding of the Generally Accepted Accounting Principles, Government Auditing Standards Board (GASB) standards. In addition, the auditor must have at least five years experience as a financial officer of a government or business.

This Charter amendment also codifies in the Charter the establishment of the audit committee, which was created by resolution of the council in 1991. The audit committee consists of the vice mayor, two members of council, one member selected by the Nashville Area Chamber of Commerce, and one member selected by the Nashville Chapter of the Tennessee Society of Certified Public Accountants. This Charter amendment would add two additional members to the audit committee that would be appointed by the mayor. In addition, the director of finance would be formally added to the committee by virtue of his official position.

Resolution No. RS2006-1304 provides a proposed amendment to the Metropolitan Charter to clarify that the office of mayor is limited to two consecutive terms. When the Charter was adopted in 1963, the office of mayor was limited to three consecutive four-year terms. The office of mayor was the only office that was term-limited by the Charter. In 1994, the Charter was amended by petition and referendum election to provide that all elected offices created by the Charter, except general sessions judges, are limited to two consecutive four-year terms.

However, the 1994 Charter amendment initiated by the citizens did not specifically repeal the Charter provision related to the term limit for the office of mayor. Therefore, a question remains as to whether the later term limit provision trumps the prior term limit provision regarding the office of mayor, or whether the office of mayor continues to have a term limit of three consecutive terms. Although the department of law has opined that the mayor is not limited to two terms, Mayor Purcell has chosen not to pursue a third term and has recommended to the Charter revision commission that the office of mayor be limited to two terms. A similar proposed Charter amendment was deferred indefinitely by the council in July 2005.

Resolution No. RS2006-1400 (SUMMERS) – This resolution provides a proposed amendment to the Charter that would require the mayor to give the annual “State of Metro” address to the council during the fourth quarter of each fiscal year. The address would have to be given in the council chamber or other suitable Metro-owned facility, and is to be open to the general public.

This proposed charter amendment was not recommended by the charter revision commission.

Resolution No. RS2006-1401 (SUMMERS) – This resolution provides two proposed amendment to the Charter pertaining to the size of the Council and the position of Vice Mayor.

Amendment No. 1 would reduce the size of the Metropolitan Council to thirty-five members and eliminate the position of councilmember-at-large.

Amendment No. 2 would eliminate the position of Vice Mayor as an elected office. Instead, the Council would elect one of its members as Vice Mayor to preside over the Council meetings.

Each of these provisions would take effect at the August 2007 election. These proposed charter amendments were not recommended by the charter revision commission.

Resolution No. RS2006-1487 (FOSTER) provides five proposed amendments to the Charter submitted by several Members of Council.

Amendment No. 1 (Summers & Foster) would eliminate the position of Vice Mayor as an elected office. This is identical to amendment No. 2 of Resolution No. RS2006-1401. The charter revision commission did not recommend this amendment.

Amendment No. 2 (Foster) would amend the term limits provisions in the Charter to expressly provide that persons elected to offices created by the Charter would be eligible to serve two consecutive full four-year terms. Serving only part of a term would not count toward the two-term limit. This is similar to the language used in the mayor's proposed Charter amendment limiting the office of mayor to two consecutive four-year terms. This amendment has not been considered by the charter revision commission.

Amendment No. 3 (Foster) would require the Mayor to give the State of Metro address to the Council not later than May 25th of each year. The address would be given in a Metro facility at a specially called meeting of the Council open to the public. No quorum of the Council would be required to hold such special meeting. The charter revision commission did not recommend this amendment.

Amendment No. 4 (Coleman) would provide that the Council can reschedule any regular Council meeting upon adoption of a resolution to that effect. The Charter currently provides that the Council is to meet on the first and third Tuesday of each month, but can hold an adjourned meeting of any regular meeting at any time it so desires.

The council office would point out that the Council already has the authority to reschedule a meeting by adjourning to a different date whenever circumstances so require. Therefore, this Charter amendment would essentially complicate the process by requiring that a resolution rescheduling the meeting be filed and acted upon rather simply adopting an adjournment motion. The charter revision commission did not recommend this amendment.

Amendment No. 5 (Craddock, Foster & Gotto) would establish an independent audit department for the Metropolitan Government. This amendment is very similar to the Charter amendment proposed by the mayor, which is the subject matter of Resolution No. RS2006-1303. The mayor's proposed amendment provides that the metropolitan auditor would be selected from a list of three persons recommended by the audit committee, and would be subject to confirmation of the council. The metropolitan auditor would serve a term of eight years and could be removed for cause by the audit committee.

This proposed amendment differs from the mayor's proposed version in that the auditor would be appointed by a majority vote of the council from a list of three persons recommended to the council by the audit committee. If the council deemed that the persons recommended by the committee were not suitable, the council could reject the names and the committee would have to submit three additional names. This Charter amendment also differs from the mayor's version as it pertains to the membership of the audit committee. The mayor has proposed adding two additional positions to the committee, which would be appointed by the mayor. These two positions would be in addition to the vice mayor, the director of finance, two members of council, one member selected by the Nashville Area Chamber of Commerce, and one member selected by the Nashville Chapter of the Tennessee Society of Certified Public Accountants. This Charter amendment does not include the two additional members to be appointed by the mayor.

This proposed Charter amendment has been referred to the charter revision commission. The commission unanimously recommended the mayor's version of the amendment creating the department of audit.

The charter revision commission did not recommend this amendment, although the commission did recommend the mayor's proposed version of a charter amendment creating an independent audit department.